



**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

**VIA ELECTRONIC AND FIRST CLASS MAIL**

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**MAR 30 2017**

RE: MUR 7227  
(formerly Pre-MUR 589)

Dear Mr. Frulla:

On December 5, 2015, your clients United Brotherhood of Carpenters ("UBC"), Southwest Regional Council of Carpenters ("SWC"), Carpenters Legislative Improvement Committee United Brotherhood of Carpenters and Joiners and Andris Silins in his official capacity as treasurer ("CLIC"), Southwest Regional Council of Carpenters Legislative Improvement Committee United Brotherhood of Carpenters & Joiners of America and Randy Thornhill in his official capacity as treasurer ("SW-CLIC"), and Carpenters Southwest Administrative Corporation ("CSAC") filed a *sua sponte* submission notifying the Federal Election Commission ("Commission") that they may have violated certain provisions of the Federal Election Campaign Act of 1971, as amended ("Act"). The Southwest Carpenters Vacation Trust ("Trust") joined the *sua sponte* submission on November 29, 2016.

Upon review of the available information, the Commission, on March 21, 2017, opened a matter under review, found reason to believe that the Trust violated 52 U.S.C. § 30116(a)(1)(C) and found reason to believe that CLIC and SW-CLIC violated 52 U.S.C. §§ 30104(b) and 30116(f). The Factual and Legal Analysis, which provides the basis for the Commission's findings, is enclosed for your information.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel ("OGC") to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that your clients violated the law.

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If your clients are interested in engaging in pre-probable cause conciliation, please contact Saurav Ghosh, the attorney assigned to this matter, at (202) 694-1650 or [sghosh@fec.gov](mailto:sghosh@fec.gov), within seven days of receiving this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials within 15 days of receiving this letter. Where appropriate, statements should be submitted under oath. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, it may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if your clients are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding. Pre-probable cause conciliation and other enforcement procedures are detailed in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at [http://www.fec.gov/em/respondent\\_guide.pdf](http://www.fec.gov/em/respondent_guide.pdf).

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

Please be advised that although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.<sup>1</sup>

This matter will remain confidential in accordance with 52 U.S.C. §§ 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

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<sup>1</sup> The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

David E. Frulla, Esq.  
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If you have any questions, please contact Saurav Ghosh, the attorney assigned to this matter, at (202) 694-1650 or [sghosh@fec.gov](mailto:sghosh@fec.gov).

On behalf of the Commission,



Steven T. Walther  
Chairman

Enclosures  
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENTS: United Brotherhood of Carpenters, MUR 7227  
4 Southwest Regional Council of Carpenters,  
5 Southwest Carpenters Vacation Trust,  
6 Carpenters Southwest Administrative Corporation,  
7 Carpenters Legislative Improvement Committee  
8 United Brotherhood of Carpenters and Joiners  
9 and Andris Silins in his official capacity as treasurer,  
10 Southwest Regional Council of Carpenters Legislative  
11 Improvement Committee United Brotherhood of  
12 Carpenters & Joiners of America, and Randy  
13 Thornhill in his official capacity as treasurer  
14

15 **I. GENERATION OF MATTER**

16 This matter was generated based on information ascertained by the Federal Election  
17 Commission ("Commission") in the normal course of carrying out its supervisory  
18 responsibilities, *see* 52 U.S.C. § 30109(a)(2). United Brotherhood of Carpenters ("UBC"),  
19 Southwest Regional Council of Carpenters ("SWC"), Carpenters Legislative Improvement  
20 Committee United Brotherhood of Carpenters and Joiners and Andris Silins in his official  
21 capacity as treasurer ("CLIC"), Southwest Regional Council of Carpenters Legislative  
22 Improvement Committee United Brotherhood of Carpenters & Joiners of America and Randy  
23 Thornhill in his official capacity as treasurer ("SW-CLIC"), and Carpenters Southwest  
24 Administrative Corporation ("CSAC") filed a *sua sponte* submission on December 5, 2015,  
25 disclosing \$218,502.01 in improper unitemized contributions made to CLIC and SW-CLIC, the  
26 separate segregated funds ("SSF") of UBC and SWC, respectively, as a result of an error in a  
27 computer program that automatically deducted contributions from participating union members'  
28 vacation pay. A trust fund, the Southwest Carpenters Vacation Trust ("Trust"), held the

1 members' vacation pay before it was improperly contributed to the SSFs, and it subsequently  
2 joined the *sua sponte*.

3 Based on the available information, the Commission has determined to open a matter  
4 under review ("MUR") and find reason to believe that the Trust violated 52 U.S.C.  
5 § 30116(a)(1)(C) by making excessive contributions, and that CLIC and SW-CLIC violated  
6 52 U.S.C. §§ 30104(b), 30116(f) by knowingly accepting excessive contributions and failing to  
7 properly disclose those contributions in their disclosure reports to the Commission.

8 **II. FACTUAL AND LEGAL ANALYSIS**

9 **A. Respondents**

10 United Brotherhood of Carpenters ("UBC") is a national labor union of carpenters. Its  
11 SSF is the Carpenters Legislative Improvement Committee United Brotherhood of Carpenters  
12 and Joiners ("CLIC"), and Andris Silins is its treasurer.

13 Southwest Regional Council of Carpenters ("SWC") is the UBC regional affiliate in  
14 Southern California and parts of the Southwest. SWC's SSF is Southwest Regional Council of  
15 Carpenters Legislative Improvement Committee United Brotherhood of Carpenters & Joiners of  
16 America ("SW-CLIC"), and Randy Thornhill is its treasurer.

17 The Southwest Carpenters Vacation Trust ("Trust") is a trust fund that was established in  
18 1962 to collect vacation pay from employers and periodically disburse it to UBC/SWC member-  
19 carpenters. After vacation pay from participating employers is deposited in the Trust, it holds  
20 the funds until they are disbursed to beneficiary carpenters.<sup>1</sup>

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<sup>1</sup> See Suppl. Submission (Nov. 29, 2016).

1           The Carpenters Southwest Administrative Corporation (“CSAC”) is a nonprofit  
2 corporation that was established in 1982 to administer the Trust as its administrative officer.  
3 CSAC receives employer contributions on the Trust’s behalf, manages the Trust’s day-to-day  
4 affairs, and prepares the periodic vacation pay disbursements from the Trust to union carpenters.<sup>2</sup>

5           **B.     Factual Background**

6           Many of the carpenters who make up UBC’s and SWC’s membership work for a variety  
7 of employers on a contract-to-contract basis. To ease the administration of employee benefits for  
8 their members, UBC and SWC entered into collective bargaining agreements with certain  
9 employers under which the employers agreed to pay funds for various employee benefits directly  
10 into accounts CSAC maintained.<sup>3</sup> For vacation benefits, CSAC manages the Trust, which  
11 collects vacation pay from employers and periodically disburses it to UBC/SWC member-  
12 employees. Carpenters electing to participate in the union’s SSF contribution program must sign  
13 a general authorization form to have their contributions allocated and deducted from their  
14 vacation pay. From 1988 to 1991, carpenters in the Southern California region made  
15 contributions to CLIC. After January 1, 1992, Southern Californian carpenters made their  
16 contributions to SW-CLIC.<sup>4</sup>

17           Over time, SWC expanded its geographic coverage area, and the Trust expanded with it.  
18 For example, the Northern Nevada Vacation Trust Fund and the Southern Nevada Vacation Trust  
19 Fund merged into the Trust in January 2004 and December 2005, respectively. However, the

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<sup>2</sup>           *Id.*

<sup>3</sup>           SWC spun off as a separate entity from the national union in 1992, and SW-CLIC formed as its SSF in November 1993.

<sup>4</sup>           The SSF for SWC was originally called “Southern California District Council of Carpenters, Carpenters Cmte. on Political Action.” Submission at 3 (Dec. 5, 2015).

1 SSF contribution program did *not* correspondingly expand its coverage area to include contracts  
2 in Nevada because SWC did not, “as a matter of course, extend[] the SSF deduction process  
3 outside Southern California.”<sup>5</sup> SWC also did not extend the SSF deduction process to certain  
4 “craft-specific” carpentry contracts in Southern California.<sup>6</sup> However, carpenters who worked  
5 on contracts in Nevada, or on craft-specific contracts in Southern California, could still sign  
6 authorization forms in order to participate in the SSF deduction program when working on  
7 program-eligible contracts.

8 The SSF contribution program uses a computer program called “CLIC Extract,” which  
9 automatically allocates a preset amount per hour worked, *e.g.*, \$0.02 per hour, from the  
10 participating carpenter’s vacation pay. Twice each year, on July 1 and December 1, CSAC pays  
11 the allocated contributions from the Trust to the SSF, and disburses the balance of vacation pay  
12 from the Trust to the beneficiary carpenters.<sup>7</sup> CLIC Extract was apparently running smoothly  
13 until January 2008, when it was modified to accommodate the addition of a new recipient  
14 committee, a state PAC in New Mexico, which is otherwise unrelated to this matter.<sup>8</sup>

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<sup>5</sup> *Id.* Thus, although SWC covers a geographic area beyond Southern California, and its members presumably work on contracts both in and outside that area, its SSF contribution program was limited to Southern California. *See* Suppl. Submission at 2 (June 15, 2016) (“A member’s CLIC or SW CLIC contribution authorization is not limited to any particular contract within [SWC], although, as a matter of practice, the “CLIC extract” program is generally applied only to certain contracts in Southern California.”).

<sup>6</sup> *See* Submission at 3.

<sup>7</sup> Different contracts could allocate different amounts for the SSF contribution. For example, if a particular carpenter worked 200 hours during the relevant time period on contracts eligible for the SSF contribution program, with 100 hours worked on contracts that allocated \$0.05 per hour, and 100 hours on contracts that allocated \$0.02 per hour, then the program would allocate \$7.00 for the SSF and CSAC would disburse the balance of vacation pay to the carpenter.

<sup>8</sup> This state committee is called the “Southwest Regional Council of Carpenters NM PAC.” Submission at 6.

1 When CLIC Extract was modified, a coding error was entered into the system that caused  
2 it to allocate SSF contributions from two categories of carpentry contracts that were *not*  
3 supposed to be covered by CLIC Extract even though vacation pay benefits from the contracts  
4 were held in the Trust: (1) contracts in Nevada, and (2) craft-specific contracts in Southern  
5 California.<sup>9</sup> Carpenters who worked on Nevada-based or craft-specific-Southern-California  
6 contracts expected that SSF deductions would *not* be allocated and they would receive full  
7 vacation pay benefits, even if they had signed authorization forms to participate in the SSF  
8 deduction program in order to make deductions when working on program-eligible contracts.

9 Due to the programming error, after January 2008, CLIC Extract began improperly  
10 allocating \$0.02 per hour in contributions from the vacation pay collected under these contracts,  
11 and CSAC remitted those amounts from the Trust to CLIC or SW-CLIC.<sup>10</sup> Notwithstanding the  
12 fact that CLIC Extract was recording erroneous unitemized contributions, the carpenters at issue  
13 *still received the full vacation pay benefits* to which they were entitled.<sup>11</sup> The table below  
14 summarizes the contributions made as a result of the CLIC Extract error.<sup>12</sup>

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<sup>9</sup> Although these carpenters were *not* working on SSF-contribution-eligible contracts when CLIC Extract allocated contributions from their vacation pay, they had previously authorized contributions under the program — while working on contracts in Southern California that *were* SSF-contribution-eligible — and were therefore recorded in the system as authorized participants. In other words, these contributions do not appear to have been “unauthorized” because the carpenters at issue had signed a general authorization form to have contributions deducted from their vacation benefits. *See* Submission at 3–4.

<sup>10</sup> *See* Submission at 6.

<sup>11</sup> *Id.*

<sup>12</sup> The erroneous allocations involved approximately 78,000 pay records of 3,588 union members. *Id.* The information in the shaded cells represents activity that falls within the five-year statute of limitation. *See* 28 U.S.C. § 2462.



Year	SW-CLIC	CLIC	Total
2008	\$57,892.34	\$7,386.00	\$65,278.34
2009	\$41,696.34	\$4,535.00	\$46,231.34
2010	\$22,559.26	\$2,345.52	\$24,904.78
2011	\$16,355.14	\$1,829.75	\$18,184.89
2012	\$16,195.45	\$1,606.91	\$17,802.36
2013	\$18,531.99	\$1,653.76	\$20,185.75
2014	\$20,374.56	\$1,712.67	\$22,087.23
2015	\$3,548.59	\$277.45	\$3,826.04
<b>Total within SOL</b>	<b>\$75,005.73</b>	<b>\$7,080.54</b>	<b>\$82,086.27</b>
<b>Grand Total</b>	<b>\$197,154.95</b>	<b>\$21,347.06</b>	<b>\$218,502.01</b>

Because the carpenters whose contracts were erroneously included in the SSF deduction program still received their full vacation pay, they did not “make” the contributions at issue. Instead, those contributions came from excess funds held in a holding account within the Trust.<sup>13</sup> In principle, the Trust serves as a collecting account for vacation funds and should pay out to union members as much as it takes in from their employers, minus any authorized contributions and administrative fees. In practice, however, the Trust holds excess funds intended for carpenters that, for one reason or another, did not apply for or receive their vacation pay. The Trust holds these funds in a “vacation pay pending” account or “lockbox.”<sup>14</sup> Because of the gradual accretion of unclaimed vacation pay over time, by 2008, that lockbox held enough money for CSAC to remit the erroneously allocated contributions to the SSFs *and* disburse full vacation pay to the carpenters working on Nevada-based or craft-specific contracts.

CSAC discovered the CLIC Extract programming error in 2015 while migrating data onto a new administrative computer system, and it then corrected the error and took steps to

<sup>13</sup> See Suppl. Letter at 1 (Nov. 29, 2016) (“[T]he Trust held legal title to the funds at issue in this matter, at the time they were contributed to CLIC and SW CLIC.”).

<sup>14</sup> Submission at 3, 6.

1 prevent future improper SSF contributions.<sup>15</sup> Both SSFs refunded the full amount of the  
2 improper contributions they received to the Trust.<sup>16</sup> CSAC has stated that it intends to more  
3 frequently reconcile its accounts in conjunction with an outside auditor. The SSFs have also  
4 expressed their willingness to amend previous disclosure reports to reflect correct source  
5 information for the contributions erroneously received from the Trust.

### 6 C. Legal Analysis

#### 7 i. Excessive Contributions

8 Under the Federal Election Campaign Act of 1971, as amended (“Act”), a contribution  
9 includes “any gift, subscription, loan, advance, or deposit of money or anything of value made  
10 by any person for the purpose of influencing any election for Federal office.”<sup>17</sup> The Act defines  
11 “person” broadly, to include “an individual, partnership, committee, association, corporation,  
12 labor organization, or any other organization or group of persons[.]”<sup>18</sup> The Act prohibits any  
13 person from making aggregate contributions to any committee, other than a candidate’s  
14 authorized committee, in excess of \$5,000 per calendar year.<sup>19</sup> The Act also prohibits political  
15 committees from knowingly accepting excessive contributions.<sup>20</sup>

<sup>15</sup> Submission at 7–8. CSAC discovered the error while migrating data onto a new administrative computer system called “basys.” Respondents acknowledged that the error “would not have been evident” without the data reconciliation occurring as part of the transition to this new system. Submission at 6.

<sup>16</sup> CLIC refunded the Trust \$21,347.06 on May 19, 2016, and SW-CLIC refunded the Trust \$197,154.95 on June 3, 2016. *See* Attach. to Suppl. Letter (June 15, 2016); Suppl. Letter at 3 (Oct. 11, 2016). The SSFs reported these refunds as itemized expenditures in their disclosure reports to the Commission. CLIC June 2016 Monthly Report at 357 (June 16, 2016); SW-CLIC Amended July 2016 Quarterly Report at 10 (Oct. 14, 2016).

<sup>17</sup> 52 U.S.C. § 30101(8)(A).

<sup>18</sup> 52 U.S.C. § 30101(11).

<sup>19</sup> 52 U.S.C. § 30116(a)(1)(C); *see* 11 C.F.R. § 110.1(d).

<sup>20</sup> 52 U.S.C. § 30116(f).

1 The available record indicates that the programming error caused CLIC Extract to  
2 allocate contributions on contracts that were not supposed to be part of the SSF contribution  
3 program. CSAC then remitted the erroneously allocated contributions from the Trust to CLIC or  
4 SW-CLIC. However, the carpenters whose contracts were erroneously covered by CLIC Extract  
5 also received the full vacation pay benefits that they were entitled to receive. As such, the record  
6 supports a reasoned inference that those carpenters never “made” the contributions. Instead, the  
7 Trust, through its administrator CSAC, “made” the contributions with funds that were previously  
8 put into the Trust for carpenters who failed to collect the vacation pay they had earned.

9 The record therefore indicates that the Trust made, and the SSFs knowingly accepted,  
10 excessive contributions. The table below details the excessive contributions, *i.e.*, contributions  
11 in excess of the permitted \$5,000 per calendar year, within the five-year limitations period.<sup>21</sup>

Year	CLIC and SW-CLIC Contributions Received	Excessive Contributions
2011	\$18,184.89	\$13,184.89
2012	\$17,802.36	\$12,802.36
2013	\$20,185.75	\$15,185.75
2014	\$22,087.23	\$17,087.23
2015	\$3,826.04	N/A
<b>Total</b>	<b>\$82,086.27</b>	<b>\$58,260.23</b>

12 Accordingly, the Commission finds reason to believe that the Trust violated 52 U.S.C.  
13 § 30116(a)(1)(C), and CLIC and SW-CLIC violated 52 U.S.C. § 30116(f). Because the record  
14 does not indicate that either UBC or SWC was involved in the violations, the Commission takes

<sup>21</sup> CLIC and SW-CLIC are affiliated committees in that they are maintained or controlled by the same labor organization. See 11 C.F.R. § 100.5(g). They therefore share a single contribution limitation under the Act, *i.e.*, they can receive no more than \$5,000 per calendar year from a single contributor. See 52 U.S.C. § 30116(a)(1)(C); 11 C.F.R. § 110.3(a).

1 no action as to those Respondents. The Commission also takes no action as to CSAC, the  
2 administrator that merely disbursed the erroneously allocated contributions from the Trust.

3 ii. Reporting Violations

4 The Act requires that political committees file periodic disclosure reports with the  
5 Commission disclosing all contributions that they receive.<sup>22</sup> Because the carpenters received full  
6 vacation benefits, they were not the true source of the contributions remitted to CLIC and SW-  
7 CLIC. The Trust was, in fact, the true contributor. The SSFs therefore misreported the source of  
8 the contributions they received. Within the statute of limitations, the amounts that were  
9 misreported are \$7,080.54 for CLIC and \$75,005.73 for SW-CLIC, or \$82,086.27 in total. The  
10 Commission therefore finds reason to believe that CLIC and SW-CLIC violated 52 U.S.C.  
11 § 30104(b).

<sup>22</sup> 52 U.S.C. § 30104(a), (b); *see* 11 C.F.R. § 104.3(a).